

STATE CONTROLLER'S OFFICE
PERSONNEL/PAYROLL SERVICES DIVISION
P.O. Box 942850
Sacramento, CA 94250-5878

DATE: August 29, 2002

PERSONNEL LETTER # 02-022

TO: All Agencies/Campuses in the Uniform State Payroll System

FROM: RALPH ZENTNER, Assistant Chief
Personnel/Payroll Services Division

RE: INTERNAL REVENUE SERVICE "LOCK-IN" LETTERS

The Internal Revenue Service (IRS) has advised the State Controller's Office that agencies and campuses are not complying with "Lock-In" letter determinations. These determinations originate from the IRS Fresno Compliance Campus and are routed through the Personnel/Payroll Services Division to the employing agency/campus.

"Lock-In" determinations result from employees filing the equivalent of Forms W-4, Employee's Withholding Allowance Certificate, which IRS determines do not meet Internal Revenue Code (IRC) and related regulation requirements. The State equivalent of the Form W-4 is the Employee Action Request (EAR, STD 686) and the Student Payroll Action Request (SPAR, STD 457). IRS, via a "Lock-In" letter, requires the employer to initiate and maintain corrective measures until otherwise instructed in writing by the IRS.

This office was asked to re-emphasize the "Lock-In" determination compliance measures that must be performed by employers and the consequences for failure to comply. Upon receipt of a "Lock-In" letter, an employer (agency/campus) must:

- Change an employee's claimed filing status and allowances to those mandated by the "Lock-In" letter within 30 days of the date of that letter.
- Maintain the IRS filing status and allowance requirements until otherwise directed in writing by the IRS. The "Lock-In" requirements remain in effect even if the employee leaves the job and later returns.
- Honor any new Form W-4 (EAR, SPAR) filing by an employee ONLY if the employee claims LESSOR filing status OR fewer allowances than IRS requires (i.e., "Lock-In" letter requires Married and 2 allowances, the employer may honor an employee's request for Single and 0 allowances).

An employer's failure to comply with a "Lock-In" determination poses significant consequences. The employer is subject to both civil and criminal penalties per IRC 6672 and IRC 7202. Compliance penalties include: the employer paying all taxes due; felony conviction with up to five years imprisonment; and personal fines up to \$10,000.00 per occurrence, plus payment for the costs of prosecution.

For additional information regarding "Lock-In" determinations, please contact the IRS Fresno Compliance Campus via phone at 1-559-265-5882 (not a toll free number).

RZ:DB/TSS